ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ALABAMA.[1]
SUPREME COURT OF COLORADO.[2]
SUPREME COURT OF JUDICATURE OF INDIANA.[3]
SUPREME JUDICIAL COURT OF MASSACHUSETTS.[4]
SUPREME COURT OF MICHIGAN.[5]
SUPREME COURT OF NORTH CAROLINA.[6]
COURT OF APPEALS OF NEW YORK.[7]
SUPREME COURT OF OHIO.[8]
SUPREME COURT OF PENNSYLVANIA.[9]
SUPREME COURT OF APPEALS OF VIRGINIA.[10]
SUPREME COURT OF WASHINGTON TERRITORY.[11]
SUPREME COURT OF WISCONSIN.[12]

ADVERSE POSSESSION.

Nature and Extent— Wood Lot—Evidence— Taxes.—In order to constitute adverse possession it is not necessary that the occupation should be such that a stranger passing the land would know that some one was asserting title to or dominion over it; nor is it necessary that the land be cleared or fenced, or any building be placed upon it: *Murray* v. *Hudson*, 59 or 60 Mich.

If a person enters upon land under a deed from another claiming to be the owner, and uses it thereafter as a wood lot appurtenant to his farm, in the usual and ordinary way, and exercises such acts of ownership over it as is necessary to enjoy such usual and ordinary use of a wood lot, such acts, being continued and uninterrupted, would amount to actual possession, and such possession, being under color of title and a claim of right, and exclusive, and held so openly and notoriously that the community would understand and recognise his claim of ownership, will be adverse; and, if continued for ten years without interruption, will bar the claim of the true owner: *Id.*

The payment of taxes by a person in possession of land under claim of title may be admitted in evidence as tending to show adverse possession: *Id.*

ASSIGNMENT.

For Benefit of Creditors—Fraud—Setting Aside—Receiver—Action by Creditor.—Where a merchant who has been conducting a successful

[1] To appear in 79 or 80 Ala. Rep.
[2] To appear in 9 or 10 Col. Rep.
[3] To appear in 109 or 110 Ind. Rep.
[4] To appear in 143 or 144 Mass. Rep.
[5] To appear in 59 or 60 Mich. Rep.
[6] To appear in 95 or 96 N. C. Rep.
[7] To appear in 103 or 104 N. Y. Rep.
[8] To appear in 44 or 45 Ohio Rep.
[9] To appear in 114 or 115 Pa. St. Rep.
[10] To appear in 81 or 82 Va. Rep.
[11] To appear in 3 or 4 W. T. Rep.
[12] To appear in 67 or 68 Wis. Rep.

business for 15 years makes an assignment for the benefit of his creditors to his own brother-in-law, after having executed chattel mortgages to his relatives covering a greater part of his property, and it is shown that the debts set out in the schedule were contracted only a few months before the assignment, that his stock in trade had been greatly reduced, and that his largest creditors were his own relations secured by the said mortgages, his creditors may file a bill, when the assignor refuses to do so, to set aside the chattel mortgages, compel the assignor to account for the property received by him, and to have a receiver appointed to carry out the provisions of the assignment; and, when the answer and the evidence on the part of the defence does not overcome the presumption of fraud arising from the circumstances shown, the creditors will be entitled to the relief prayed: *Funke* v. *Cone*, 59 or 60 Mich.

Where an assignee for the benefit of creditors refuses, after the written request of creditors, to sue to set aside a fraudulent chattel mortgage made by the assignor, the validity of such a mortgage may be attacked in a suit in equity by the creditors for the appointment of a receiver to carry out the provisions of the assignment, and to set aside such mortgage when no demurrer to the bill is filed, and the issue of validity is met by the answer: *Id.*

ATTORNEY AND CLIENT. See *Witness.*

BANKS AND BANKING.

Collections—Promissory Note—Fraud of Creditors—Garnishment—Practice.—A bank with which a note is deposited by the payee, for collection, cannot refuse to return the note, or its proceeds, to the depositor, on the ground that it was given to defraud creditors of a third person, unless the bank itself is one of those creditors: *First Nat. Bank of Leadville* v. *Leppel*, 9 or 10 Col.

To hold a bank with which a note is deposited, for collection, as garnishee, with respect to said note, a special notice is necessary, specifying the note in question as the property of a person other than the depositor: *Id.*

Evidence—Parol—Promissory Notes—Undisclosed Purpose—Principal and Agent—When the Relation Exists.—In an action by a bank against an endorser of promissory notes, to recover the amount of the notes, it is competent for the defendant to prove by parol testimony that the notes were given by the maker in settlement of overdue notes held by the bank, some of which the defendant had endorsed, and that the endorsements were made relying on the assurance of the president of the bank, who managed the affair, that the maker was to execute a bond and mortgage to secure the notes, and that the bank would look to the maker and the security alone, and that recourse would not be had to the endorser: *Cake* v. *Pottsville Bank*, 114 or 115 Pa. St.

But testimony of the endorser himself, to the effect that he "would not have endorsed the notes had it not been for the express stipulation that he should not be liable thereon," merely tends to show his thoughts and purposes, not disclosed at the making of the contract, and is not admissible: *Id.*

A president of a bank who secures a settlement from an endorser on overdue notes held by the bank, by taking new notes signed and endorsed

by the same parties, acts as the agent of the bank, and whatever he does within the apparent scope of his authority to obtain the new security is binding on the bank which accepts and holds the security: *Id.*

Certificate of Deposit — Loss — Liability — Interest — Demand.—A negotiable certificate of deposit, if lost before endorsement by the depositor, can invest the finder with no title, and the depositor may maintain a suit at law to recover on such lost certificate upon refusal of the bank to surrender the deposit, unless he shall execute to it an indemnity bond against possible future loss. And this rule is not changed by the terms of the certificate, which makes the same payable "on return of the certificate:" *Citizens' Nat. Bank* v. *Brown*, 44 or 45 Ohio.

In such a case, interest should be allowed the depositor from the date of the bank's refusal to pay the amount of the deposit: *Id.*

Draft—Certification—Liability.—In an action upon a draft drawn upon and certified by defendant, which had been fraudulently altered in amount, plaintiff's counsel, in his opening, stated that plaintiff expected to prove that, before taking the draft, plaintiff asked defendant's teller if the certification was good, and was told it was, after careful examination of the draft by the teller; that notice had previously been given by the drawer to the defendant of the miscarriage of the draft, and a request to stop payment; that, in the ordinary usage of banks, it was the duty of the teller, before answering the question, to compare the draft with his certification book and book of stopped payments; and that said question related, not merely to marks of certification, but to the draft as certified. Upon this statement plaintiff's complaint was dismissed: *Held* error, and that, aside from the question of usage, plaintiff had a right to go to the jury on the question whether the inquiry made of the teller was understood by the parties as referring to the validity of the certification, at the time it was exhibited to the teller, or only to the marks of certification, and also on the question whether it was culpable negligence for the teller to answer the question without referring to the books: *Clews* v. *Bank of N. Y. Nat. Banking Ass'n*, 103 or 104 N. Y.

BILLS AND NOTES. See *Banks and Banking.*

Negotiable Instruments—Notice to Endorser—Sufficiency.—Notice of non-payment of a note endorsed by a copartnership is sufficiently served on the firm if sent through the post-office to what was its place of business at the time when the note was given, in the absence of knowledge, on the part of the holder, of removal; and such knowledge is not to be inferred from knowledge that the endorsers had failed, and assigned to one who was winding up their affairs for the benefit of the creditors at the former place of business; and the notice would be sufficient to hold a member of the firm, even if the holder knew that he was absent, but had a residence in a neighboring town: *Importers' and Traders' Nat. Bank* v. *Shaw*, 143 or 144 Mass.

CHAMPERTY AND MAINTENANCE.

Contingent Fees.—A contract by which an attorney depends on the contingency of success for payment for all services, and the client agrees to furnish evidence and pay all actual costs, and that the attorney shall

be entitled to very large and liberal fees, not to exceed fifty per cent. of the amount collected, is not champertous, nor void for maintenance: *Blaisdell* v. *Ahern*, 143 or 144 Mass.

COMMISSIONS. See *Principal and Agent.*

CONTRACT.

Executory—Action on—Instruction—Value of Painting.—Where an artist who has agreed to paint the portrait of two children fails to complete the work for several years, and the father, for whom the picture was painted, refuses to accept it, in an action to recover the value of the painting it is error to make no reference to the delay on the part of plaintiff in completing the picture: *Turner* v. *Mason*, 59 or 60 Mich.

In an action by an artist to recover the value of a portrait of children, painted for a father, which he has refused to accept, it is error to instruct the jury to give as damages what the picture was worth, and what the artist's services were worth, taking into consideration the exhausting studies necessary to acquire skill as an artist, and the time consumed and expenses incurred in acquiring professional knowledge and distinction, as the compensation of artists is not generally measured by the intrinsic merit either of themselves or of their pictures: *Id.*

CORPORATION.

Municipal—Hospital—Establishment—Amendment of Statute.—A purchase by a city of land outside of its corporate limits, to use as the site of a small-pox hospital, in lawful pursuance of a general statute authorizing the establishment of hospitals, will be regarded as such an establishment of the hospital on the site in question that the city can use the property for said purpose without hindrance, although before such use, and a few days after the purchase and conveyance to the city, an amendment of the law is enacted, providing that cities locating hospitals outside of their corporate limits must first obtain the consent of the county court and board of supervisors: *City of Richmond* v. *Supervisors of Henrico Co.*, 81 or 82 Va.

Same—Defective Streets—Obstructions—Notice.—Where the evidence shows that the plaintiff was injured by falling over a plank across a sidewalk, placed there by persons engaged in erecting a building, and that the accident occurred after dark of the first day on which the plank was placed across the sidewalk, the city is not liable, for the reason that it does not appear that the obstruction had wrongfully been upon the sidewalk such a length of time as to charge the municipal authorities with notice: *City of Warsaw* v. *Dunlap*, 109 or 110 Ind.

Same—Defective Streets—Snow and Ice—It is the duty of a municipal corporation in New York to keep its sidewalks clear of snow and ice, so that they may be safe and convenient for passage; but it may impose the duty of so doing upon the citizens, and it is not guilty of negligence if, observing the work is being generally done, it awaits their action for a reasonable period. When, however, such reasonable time has been given, the corporation must either compel the citizens to act, or do the work itself; and, if it suffers the obstruction to remain thereafter, with notice, actual or constructive, of its existence, it will be responsible for injuries resulting: *Taylor* v. *City of Yonkers*, 103 or 104 N. Y.

It is not negligence on the part of a city in New York to fail to remove from its sidewalks ice formed by a sudden fall of temperature, and which it is practically impossible to remove, or to fail to compel its citizens to sprinkle such ice with ashes or sand to prevent it from being slippery, but the city may await a change of temperature, which will remove the danger: *Id.*

A slope over a sidewalk in a city, formed by sand and small stones that had washed out of an embankment from time to time, being allowed to accumulate, became covered with sleet and ice during a cold night; and a person, in going to his place of business early in the morning, fearing to go down the steps in front of his house, attempted to walk over the slope, fell, and was injured. *Held*, that if the accident was caused by the ice alone, the city would not be liable; but that if the condition of the slope, which the city had negligently allowed to be formed and remain over the walk, was a concurring cause of the fall, without which the accident would not have happened, the city would be responsible: *Id.*

Criminal Law.

Statutory Offence—Repeal of Statute.—Where a party is convicted under an act that is repealed after the conviction, but before judgment thereon, the proceedings are arrested, and all authority to pronounce judgment withdrawn: *State* v. *Williams*, 95 or 96 N. C.

Damages. See *Railroads.*

Evidence. See *Adverse Possession; Banks and Banking; Railroads.*

Secondary—Payment under Protest—Notice.—In a suit for taxes paid under protest, plaintiff showed that inclosed with the check with which it paid its taxes was a protest; that the treasurer acknowledged the receipt of the check and protest. It was then permitted to put in evidence a copy of the protest made by plaintiff's manager when he sent it, over defendant's objection that the original should have been introduced, or a notice served on the treasurer to produce it: *Held* that, the protest being a mere notice, it was not necessary to produce the original; but, after the fact of service was shown, it was provable by a copy made at the same time as the original: *Mich. Land & Iron Co., Limited*, v. *Township of Republic*, 59 or 60 Mich.

Opinion—Practical Knowledge.—Plaintiff claimed damages from a railroad company for preventing the letting of his tenements by blasting near by. While on the witness stand, plaintiff was asked: "Could you not have rented these tenements but for the railway?" *Held* a proper question, calling for the witness' belief on a matter within his own knowledge, and not calling for an opinion on a question of science or skill: *G. B. & L. Ry.* v. *Eagles*, 9 or 10 Col.

Fraud. See *Assignment; Trusts.*

Guardian and Ward.

Investments.—In making a loan of the money of his ward, the guardian should be as circumspect and prudent as an ordinarily prudent man

would be in lending his own money. He should look, not alone to the ultimate sufficiency of the borrower, or of the mortgage security offered, but should also consider whether or not, when the money shall be wanted, it can probably be realized without the expense of litigation; or he should provide in the mortgage that any expense attending the foreclosure shall be secured by the premises mortgaged: *Brewer* v. *Ernest*, 79 or 80 Ala.

LIENS.

Equitable—Laundry-Man.—The plaintiff, a laundry company, contracted with the defendant, a manufacturer, to launder collars and cuffs for him, and the agreement was that the goods were to be returned as fast as laundered, and on the first of each month defendant was to pay for those goods which were laundered and returned during the preceding month: *Held*, that the plaintiff had no lien upon the goods in his possession for balance unpaid on his work, as, by the terms of the contract, possession of the goods was to be surrendered before payment: *Wiles Laundry Co.* v. *Hahlo*, 103 or 104 N. Y.

LIQUIDATED DAMAGES.

Stipulation—Bar to suit.—A provision, in a contract to put a steam-boiler in a vessel, that the contractor binds himself "to pay or allow to the party of the first part $5 per day, Sundays excepted, as fixed, settled, and liquidated damages, for all time after February 10th 1877, till the aforesaid boiler is delivered and tested, and the last-mentioned amount, if any, to be deducted from the last payment," which was payable on February 10th 1877, "when the boiler is delivered at boat, tested, and found all right," does not prevent a suit to recover damages for a failure to deliver the boiler in the time agreed; but if the plaintiff has, under the contract, retained in his hands sufficient to cover the damages stipulated, that fact may be shown in bar of the action: *Mitchell* v. *McKinnon*, 59 or 60 Mich.

MORTGAGE. See *Trusts*.

NEW TRIAL.

Custody of Jury—Sheriff.—Where the sheriff who had the jury in charge during their deliberations in a trial for homicide entered the complaint on which defendant was arrested, and also testified as a witness for the prosecution, *held*, that this did not justify a new trial: *People* v. *Coughlin*, 59 or 60 Mich.

NOTICE. See *Bills and Notes; Evidence; Trusts*.

PRINCIPAL AND AGENT. See *Banks and Banking*.

Commissions—Liability—Employment by Buyer and Seller.—The fact that S. hires J. to sell realty belonging to his wife, at the same time telling J. that it is his wife's property, does not, of itself, constitute S. his wife's agent, as to J., so as to relieve him of liability to J. for the commissions for the sale, the question being to whom J. gave credit. S. became personally liable if he undertook to be so, and this might be inferred from the fact that he contracted with the plaintiff in his own name, and without any qualification: *Jarvis* v. *Schaefer*, 103 or 104 N. Y.

Where S. had employed J. to sell certain realty, the fact that J. is employed by the buyer of the property to negotiate for the property does

not relieve S. of liability to pay J. his commissions, if S. knew of J.'s employment by the buyer, and if buyer and seller came together, and settled the terms; the agent simply procuring for each a vendor or buyer, as the case might be: *Id.*

PRIVILEGED COMMUNICATION. See *Witness.*

RAILROADS.

Damages—Measure—Loss of Business—Construction of Railroad—Evidence—Competency.—A hotel keeper is entitled to damages for loss of business in an action against a railroad company, who, in blasting rocks for the purpose of building the road-bed, cause guests to leave the hotel in fear of flying rocks and other debris: *G., B. & L. Ry. Co.* v. *Doyle*, 9 or 10 Col.

In such an action, evidence of injury to other buildings in the immediate vicinity of plaintiff's building is admissible on the question whether the danger from the missiles was so great as to justify the fears of plaintiff's guests, and authorize their departure; for, if it was not, plaintiff would not have a right to recover: *Id.*

SALE.

On Approval—Resale—Title Acquired.—A., a dealer in diamonds, by his agent, delivered a pair of ear-rings to B., who was also a dealer, and took from him a receipt, stating the value of the jewels, and that they were received "on approval to show to my customers," and "to be returned on demand" to A. B. sold them to C., who paid for them in good faith. *Held*, in an action by A. against C., that B. had authority to sell them, and C. acquired a good title to them: *Smith* v. *Clews*, 103 or 104 N. Y.

STATUTE. See *Criminal Law.*

STREETS. See *Corporation.*

SUNDAY.

Keeping Open Shop—Hebrew—Sales to Hebrews—Work of Necessity or Charity.—At the trial of a complaint charging the defendant with keeping open his shop upon the Lord's day, evidence that the defendant was a Hebrew, who conscientiously believed that the seventh day of the week ought to be observed as the Sabbath, and that he actually refrained from secular business on that day, is immaterial: *Commonwealth* v. *Starr*, 143 or 144 Mass.

At the trial of a complaint charging the defendant with keeping open his shop on the Lord's day in alleged violation of a statute prohibiting the keeping open of a shop on that day for any purposes of business, it is incompetent for the defendant, a Hebrew, to prove that he kept open his shop for the sole purpose of selling meat to Hebrews, and that this was a work of necessity or charity: *Id.*

TAXES. See *Adverse Possession.*

TRUSTS.

Power of Trustee—Mortgage—Record—Notice—Foreclosure—Personal Judgment.—A wife, by deed, conveyed property to her husband in trust for her children, their heirs and assigns forever. The deed authorized the husband "to sell and convey the said property as to him

seems best, and to reinvest the money received from the same for the benefit of the above-mentioned children." The deed was not to become operative, or be placed on record, during the lifetime of grantor. If her husband survived her, he was "to control and govern such property the same as if he held the same in fee-simple, without let, hindrance or bond to any person or persons." After her death the husband sold the land for $1700, and bought other land of H., plaintiff's intestate, for which he paid $800, and gave a purchase-money mortgage for $800. Subsequently he borrowed $600 of H., and gave a second mortgage therefor on the same property. His deed from his wife was on record: *Held* that, the record being notice to H., and the deed giving no power to mortgage, the second mortgage was void; but that, the purchase having been valid because the price did not exceed the proceeds of the sale of the land conveyed in the trust deed, it was competent for the trustee to give a purchase-money mortgage in pursuance of such valid purchase: *Hannah* v. *Carnahan*, 59 or 60 Mich.

Where a trustee gives a valid mortgage on trust property, on the foreclosure of the mortgage it is proper to render a personal decree against the trustee: *Id.*

Transaction with Beneficiary—Validity—Fraud—Duration of Trust—Confidential Relations—Presumption—Avoidance of Contract.—J. W. and M. W., husband and wife, dying, left a daughter, M. I. W., as their sole heir. Though there were no debts owing by the estate, defendant, a neighbor and friend of the parents, became administrator for the sole purpose of collecting rent, and recovering possession of certain land. Soon afterwards he procured from the heir a lease of the land, and before that expired he procured an extension: *Held*, that defendant became trustee for the heir, or was estopped from denying that he was trustee, and that the lease was void, as contrary to public policy, even in the absence of fraud, at the mere will and option of the beneficiary: *Meeker* v. *Gardella*, 3 or 4 W. T.

Defendant claiming that the extension was after the trust relation had ceased, *held* that, it appearing that he had been trustee of both father and mother, and administrator of both, and, as a friend of the family, they and the daughter had put their trust in him, and he had, by virtue of the trust, possession of the property; that the daughter was far away, and had no personal knowledge of her rights; that her correspondence in regard to the property was solely with him,—the relation of trust and confidence continued to the time of the extension: *Id.*

In such a case, fraud for which a lease would be voidable will be presumed; and, in the absence of the strongest proof of good faith and want of fraud, the presumption will not be rebutted: *Id.*

The daughter having conveyed the land to plaintiffs by a warranty deed, this act avoided her lease, and all rights of defendant, and title of plaintiffs gave them the right to recover: *Id.*

WITNESS.

Privileged Communications—Attorney and Client.—A simple inquiry made by one of an attorney as to the existence of a matter of fact in which the inquirer is interested, does not create the relation of client and attorney between them, so as to make their communications privileged, and prevent the attorney from testifying with reference thereto: *Plano Manuf. Co.* v. *Frawley*, 67 or 68 Wis.